all options are clearly disclosed. See, H. Rep. 119, S. Rep. 23, Cellular Order. Similarly, any equipment which is unbundled could also be marketed with an optional service agreement. Such agreements are not cable services and are fully competitive; they are subject only to the regulation of the marketplace.

F. Franchise Costs Must Be Broadly Defined [¶73]

The Commission rightly concludes that Sections 622(c)(2) and 623(b)(4) intend to permit the identification of franchise costs on a separate line item of the invoice. This promotes a fundamental purpose of assuring local political accountability for the imposition of such costs in a franchise. See LINE ITEMIZATION, Part VI. To serve these purposes, costs attributable to franchise requirements must also include the costs of required local origination, I-Nets, and other municipal benefits. Access costs should include capital (studios, equipment and bandwidth) as well as personnel and other related operating expenses.

G. Customer Changes (Upgrades, Downgrades)[¶74-78]

As with basic service pricing standards, the Commission must read the statute as a whole to make sense of its restriction on "unreasonable" charges for changes in services or equipment. Congress offered no definition to accompany its insistence on "nominal" charges for charges effected from a remote addressable controller. Whether nominal means "insignificant" or "satisfactory" -- both accepted Webster's Dictionary definitions -- is unclear.

Congress was motivated to reduce uneconomic "disincentives" erected "to discourage" downgrades. H. Rep. 84. The statute should be construed in accordance with this purpose and with due regard to the purpose of charges for service changes. Continental originally invested in excess of $150 per addressable household based on cost savings from electronic service changes compared to dispatching a truck and technician to physically install or remove filters. To preclude an operator from charging for electronic service changes will inhibit the recovery of that investment. Continental's charges for service changes are not intended to discourage downgrades; they are intended to properly recover the cost of addressability.

Any downgrade to basic should be priced -- as is equipment -- at cost, including a recovery of investment and overhead. Cost includes a return, which is merely the cost of capital, not an invidious "profit." Any upgrade to satellite tier could be priced with a greater return (as are tier services themselves), although it is likely that operators may facilitate upgrade. Any compulsory below cost price would produce uneconomic churn and would deprive an operator of a fair return on services provided. By adopting this model, the rules would automatically assure that whatever services may be performed by addressability at "nominal" cost will be priced nominally.

We do not believe that the provision applies to changes in equipment independent of changing the service tier. We believe the clause's earlier reference to equipment is only to the traps, filters, and other equipment which may be necessary to change service tiers. If it were otherwise, the later reference to "changing the service tier" would have included equipment.

There is no basis for creating artificially low prices for customer changes made possible by the 1992 Act. All that will do is inspire uneconomic conduct.

H. Implementation and Enforcement [¶79-89]

As the Commission has noted, without "expeditious resolution" of rate matters, protracted proceedings and concomitant uncertainty will injure an operator's ability to serve the community.

If the Commission adopts the clear benchmarks we recommend, time limits should be staggered. Increases in any taxes, franchise fees, or PEG access payments that are imposed on the cable operator by governmental authorities should be automatically flowed through, regardless of benchmarks, in a line item on 30 days notice. Retransmission consent costs should be handled in the same way. A franchising authority should be given no more than 60 days to resolve any other rate controversies under the benchmarks. If an operator did not seek to exceed benchmarks, no discovery would be required. To the extent an operator seeks a right to exceed benchmarks (other than with line item flow throughs), an additional 60 days should be provided for the additional evidence required. If the authority is unable to reach an adverse ruling in these times, the rates at issue should be deemed reasonable. The time frames would run either from the time the franchising authority is initially certified by the Commission or from the date of any announced rate increase, whichever is later. For this review period to be meaningful, the Commission should make certain that franchising authorities afford cable operators a meaningful opportunity to present an affirmative case. Continental Cablevision of Massachusetts, Inc. v. Irwin, Civ. No. 91-11256-N (D. Mass. July 15, 1991) (due process right to present renewal case without arbitrary time limits on evidence). Only if operators seek to exceed benchmarks (other than with line item flow throughs) would discovery be permitted, and then only under protective provisions limiting production of any information which identifies individual employee salaries; terms and conditions of contracts with third party vendors; and other confidential business information. See Part V.D. Continental supports the Commission's proposal that franchising authorities issue a written decision explaining the denial of a rate increase.

We also support the Commission's suggestion that cable operators be allowed to implement rate increases, with 30 days prior notice, subject to possible review and refund. As the Commission notes, the statutory 30 days advance notice period may not be adequate for franchising authorities "to render an informed and judicious rate determination." The notice period simply affords the opportunity for the franchising authority to communicate an initial reaction and for the cable operator to reconsider its plans. Allowing operators to implement an announced rate increase, subject to refund, should facilitate the rapid introduction of new services.[15/] Indeed, collection subject to refund is the only mechanism which can accommodate the usual political resistance to any rate increase, even those known to be warranted, and the immunity from damages which Congress has extended to cities. Collection subject to refund assures operators the proceeds of rate increases which are ultimately

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15/ To avoid any possible confusion, the FCC should make clear that pursuant to Section 623(a), the 30 day notice period provided in the 1992 Act preempts any longer requirements included in particular franchise agreements.

We also support the Commission's suggestion that cable operators provide subscribers with "approximately" 30 days advance notice of a pending rate increase. The Commission is to be applauded for recognizing that many cable operators today use a staggered billing cycle over which mailings to subscribers are spread in order to levelize the number of telephone inquiries. Continental agrees that subscriber notice requirements should generally apply to the cycle "closest" to the specified date, rather than requiring that all notices be distributed prior to that date.

found lawful. The concern expressed in the NPRM that this approach might inadequately protect consumers from "potentially unreasonable rate increases" is ill-founded. Cable operators are unlikely to implement any rate change they fear has a strong likelihood of requiring subsequent refunds.

A franchising authority should not be allowed to designate a new rate. Such ratemaking power is not established in the Act, and consumers will be adequately protected with denials of increases and/or negotiated resubmittals or settlements, as is customary at PSCs. In no circumstance should the operator be under obligation to continue offering a particular service package at the price designated by the franchising authority. The operator should be free to restructure the offering.

The NPRM also asks what type of enforcement tools are available to local franchising authorities. Given the novelty of the new regulatory regime, the Commission should strictly prohibit franchising authorities from imposing punitive sanctions. In fact, the Commission should clarify that an operator has not violated the 1992 Act, Commission regulations, or the terms of any franchise, merely by implementing a rate level above that ultimately permitted. Cable operators should not be required to risk a franchise revocation or non-renewal, or even penalty fees, for seeking rates which are later found to be excessive. Refund orders should adequately protect cable subscribers, without making every rate increase a "bet the system" proposition.

The NPRM asks whether local courts, rather than the Commission, might be the appropriate forum for appeals of local rate decisions. The answer is no. The statute expressly requires the Commission to hear such appeals. Section 623(a)(5) provides, "Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority.....[and] grant appropriate relief." As Chairman Markey explained: "Both consumers and industry would benefit from centralizing this responsibility in a single regulatory agency where the essential expertise was concentrated." 138 Cong. Rec. H 6524 (July 23, 1992). Accord, 138 Cong. Rec. S 14606 (Sep. 22, 1992), S 16674 (Oct. 5, 1992) ("cable operators are afforded rights of appeal to the FCC"). The courts can review the Commission's decision in this rulemaking and in subsequent implementation cases, but they are not expertly equipped to directly review a franchising authority's compliance with the Commission's rate regulation standards.

The Commission concludes this section of the NPRM by addressing subscriber notification requirements. The issue evidently stems from a concern that cable operators fail to properly promote the availability of their "no frills" basic service. Providing initial written notice to all existing subscribers within 90 days or three billing cycles (from the effective date of the rules) is generally reasonable, but operators who can demonstrate that existing subscribers have been notified within the previous 12 months should not be required to renotify existing customers. Ninety (90) days is also a reasonable date by which operators should provide written notice to all new subscribers. But the suggestion that "any sales information" at or prior to installation recite the availability of basic service is inappropriate. Some of that information originates from third parties, and is beyond the operator's control. Often, cable operators use promotional materials that are furnished by premium programming suppliers such as HBO or Showtime. The economics of producing such materials nationally would be lost if they had to be tailored community by community to describe basic service offerings. In any event, operators should have the freedom to selectively promote certain services and program packages, without describing every service offering. The only requirement should be that the subscriber initially be notified of the availability of basic service. The Commission should refrain from dictating the specific content or form of that notification. The only requirement should be that the notice identify the availability of basic service and describe that service.

V. CABLE PROGRAMMING SERVICES

A. Tier Complaint Standards [¶91-96]

The rules appropriate to cable programming services (and related equipment) are quite unlike the rules appropriate to regulated basic service. Congress' intent was to discipline bad actors, not to apply the full panoply of rate regulation to tiers. In introducing the bill, Rep. Markey explained its tier provisions as designed "to rein in those renegades." 138 Cong. Rec. E789 (March 6, 1991). Sen. Inouye and Mr. Dingell each referred to the provisions as the "bad actor" regulations, for "case by case" complaints against those "cable operators who are engaged in persistent and continuous misbehavior." 138 Cong. Rec. H 6522 (July 23, 1992) (Dingell); S 14224 (Sep. 21, 1992) (Inouye). Others repeated the characterization. E.g., 138 Cong. Rec. H 6587 (July 23, 1992) (Lehman) ("rein in those few bad apples that threaten to ruin it for the majority of good ones"); H 6556 (July 23, 1992) (Tauzin) ("bad actor"). The House Committee specifically found that only "a minority of cable operators" had abused deregulation, H. Rep. 33. Mr. Dingell reported out of conference that the Conference Committee had rejected the Senate approach and elected not to extend comprehensive basic service regulation to the more popular tiers of satellite cable networks. 138 Cong. Rec. S 14224 (Sep. 21, 1992). The legislative history further suggests that satellite tier revenue could be used to subsidize basic, which would be impossible if both were subject to the same standards.[16/] The statute subjects satellite tier only to individualized complaints based on far broader standards -- not to comprehensive rate regulation.

In Continental's view, the appropriate mechanism to discipline abusive pricing of cable programming services[17/] is to permit complaints only against the abusers. A benchmark based primarily on rates for a random sampling of cable systems (as opposed to the narrower categories used to measure basic service benchmarks) is the most efficient way to regulate cable programming services. A benchmark method will, in general, provide a valid starting point for differentiating between clearly reasonable or patently unreasonable rates for these optional services. A benchmark method for assessing cable

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16/ Pay penetration is declining, and cannot realistically be looked to as a source of meaningful subsidy. In 1984, revenues from basic and satellite services accounted for 55% of Continental's total revenues. Today, they account for 72%. Advertising revenues accounted for less than 1% of Continental's total revenues in 1984. Today they account for 4%. Despite the addition of pay-per-view revenues, premium revenues have declined from 45% of total revenue to 24% over the past eight years.

17/ Multiplexed premium services should be considered premium services, not "cable programming services," whenever a substantial majority of the programming is the same and offered on a timeshifted basis. This will provide some opportunity to offer additional value with multiplexing. [¶95] programming rates will be able to draw upon the same types of industry data that should be used to evaluate basic service rates. Because common types of data could be used, an individual or franchising authority that wished to invoke Commission review of a system's optional service pricing would understand the rate evaluation system better than if an entirely different threshold test were applied to basic and optional programming prices. If the Commission adopts the "open" complaint process for cable programming service, as outlined in the Notice, its administration and review of preliminary complaint filings clearly would be facilitated by using benchmarks for subsection (c) regulation as well as subsection (b).

The cable programming service benchmarks would be significantly simpler than the set of basic rate benchmarks that we discussed above. Cable programming service rate benchmarks call for somewhat broader categories of services due to the diversity and expanding number of services that systems will offer in different tiers of optional services. The breadth of the benchmark categories for optional services also will be less important because these services will be regulated on an "exception" basis, i.e., via individual complaints. Broader, simpler benchmarks also would allow the Commission, system operators and service users more flexibility with respect to price levels for optional services.

We recognize that some regulatory flexibility will benefit all parties, even though Continental believes that there is no legal or economic basis for fixing basic service rates at artificially low levels. The 1992 Act does not command, nor could it, excluding any direct or indirect but causally-related costs from any segment of the cable business. A level of profit no higher than that which is appropriate for the cable system as a whole likewise is an economic cost of doing business that is properly borne by all segments, including the basic service tier. The obvious answer to the question [¶94] whether the Commission should skew its rate regime so that "most costs" or "most profits" are intentionally diverted from basic service is thus "No." Nevertheless, the multi-part regulatory scheme in the 1992 Act clearly will be enhanced if rate levels for optional satellite tiers (as well as the operator's prices for per-channel/per-program services) are viewed as somewhat residual to prices established in basic service and equipment segments. A straightforward way of accomplishing this is to permit complaints only against operators with rates which rank among the highest 2% to 5% of benchmark system rates, as the Commission suggests at ¶46.

B. Evaluation of a Tier Complaint Must Also Account for Basic Rates

Some operators, including Continental, may wish to continue pricing basic service at lifeline levels and recovering costs disproportionately from tiers. That is an approach which may have societal benefits; and which is encouraged by portions of the legislative history. However, it might expose an operator to a bad actor complaint unless the satellite tier price is evaluated in combination with the price of basic service which a customer must also buy to reach the tier. Looking to the combined price was an approach specifically created by the Conference in Sec. 623(c)(2)(D), and should be embraced by the Commission. Conf. Rep. 65.

C. Packaging [¶96]

The NPRM also asks how the Commission should treat regulation of a la carte services that are also offered on a "package" or "tier" basis. The answer is quite simple -- the Commission should refrain from regulating these offerings. It is quite common for cable operators to offer substantial discounts to encourage both initial and expanded cable subscribership. Dicount packaging is a time-honored marketing technique to allow subscribers to benefit from certain economies of operation and to encourage overall consumption. Continental's multi-pay discounts, for example, reduce the price of New England Sports

Network and Sports Channel from $9.95 each to $13.95 for both: this option is used by 20%-80% of Continental's New England subscribers (depending on season and proximity to Boston). Continental's Stockton, California "packages" provide discounts off of the a la carte rate for basic, satellite tiers, premiums, remotes and guides, providing customers a minimum monthly savings of at least $1.90. There is nothing unique about the cable industry in this regard, and no reason to deny it the marketing flexibility afforded to other industries. <u>See</u>, <u>e.g.</u>, <u>Bundling of Cellular Customer Premises Equipment and Cellular Service</u>, 7 F.C.C.Rcd. 4028, 4030-31 (1992).

The 1992 Act clearly exempts from rate regulation, "video programming offered on a per channel or per program basis." 47 U.S.C. § 543(l)(2)(B). The exemption "demonstrate[s] the "Committee's belief that greater unbundling of offerings leads to more subscriber choice and greater competition among program services." S. Rep. at 77. Operators should not lose the benefit of the exemption merely by extending discounts to customers off of a la carte offerings through packages.

The Commission should address the a la carte issue only in terms of its overall statutory responsibility to preempt rate "evasions." 47 U.S.C. § 543(h). It should intercede only upon a showing that the a la carte offering is not a bona fide option. This does not mean, however, that every time a substantial package discount is available, the a la carte offering should be rejected as a sham. The Commission must establish a high threshold for finding a rate "evasion" or it will quickly find itself in the untenable position of second-guessing every operator's marketing strategy.

D. Complaint Procedures; Rate Reduction and Refund Procedures for Rates Found to be Unreasonable [¶97-110]

Section 623(c)(1)(B) instructs the Commission to establish "fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any subscriber, franchising authority, or other relevant . . . entity." As explained in Part IV.B. and C, the Commission should accomplish that end by adopting "benchmark" regulations, with sufficient latitude to accommodate reasonable pricing deviations. This streamlined approach will benefit consumers, as well as Commission staff and cable operators.

To minimize initial processing burdens, the Commission should require that each complainant submit a simple, standardized form, akin to the certification form submitted by franchising authorities. If a complaint is submitted initially in some other fashion, the Commission should promptly return it, along with a blank form and accompanying instructions. The complaint form itself should, of course, be served on the local cable operator.

The Commission's complaint form should seek only essential information, such as the system and community involved, the services provided, the rates charged, which rate standard is violated, evidence that the complainant is a subscriber (e.g., copy of most recent cable bill), when the complainant was advised of the contested rates, and whether the complainant has previously filed a complaint. Most importantly, the complainant should certify that 15 days prior notice was provided to the cable operator. This simple requirement will facilitate communications and likely eliminate a large percentage of frivolous complaints.

Continental agrees with the suggestion that (after the initial 180 day implementation period is concluded) a complaint must be filed within 30 days of the operator providing notice of a rate increase. This period should provide ample time for the complainant to secure and complete the necessary form, and still protect the operator from the uncertainty of "stale" complaints.

Once a complaint form is submitted, the Commission should promptly investigate the contested rates. If additional information is necessary, the Commission should require a prompt response from either the complainant or the cable operator, as appropriate. Within 30 days from the complaint being submitted, the Commission should make an initial ruling as to whether the contested rates exceed the relevant benchmark figure. If the rates do, the Commission should give the operator the choice of reducing its rates to comply with the benchmark figure, seeking reconsideration, or initiating a cost-based hearing. Confidential submissions should be permitted pursuant to the standards of 47 C.F.R. 0.459, so long as the Commission explains that: (1) all rate submissions are to be treated as "required to be filed;" (2) in cases of confidential business information or matters of personal privacy, protective orders shall be agreed upon in advance of submission; (3) such materials shall be prohibited from disclosure under FOIA or counterpart law; (4) such materials shall be disclosed only to lawyers and expert witnesses and for purposes of that proceeding only. (If individuals are proceeding without counsel, only <u>in camera</u> FCC inspection would be allowed.) Continental would welcome relaxed ex parte rules and elective alternative dispute solution procedures.

As the <u>NPRM</u> suggests, the Commission should enforce its rate determinations by ordering prospective relief, as well as refunds dating back to the date of complaint. Rather than requiring operators to issue refunds to past subscribers, the Commission should allow operators to refund any overcharges by reducing rates or increasing services for existing subscribers. While prompt compliance is expected, a 60 day period will better accommodate established billing cycles.

The suggestion in the NPRM that noncomplying operators be subject to forfeitures should be rejected. Given the uncertainty likely to surround rate regulation for the foreseeable future, forfeitures would be unduly harsh. At least initially, relief should be limited to injunctions and refund orders. Such relief will adequately protect subscribers.

VI. UNIFORM RATE STRUCTURE/DISCRIMINATION [¶111-115]

A. The 1992 Act Does Not Require That Rates Be Identical Throughout Contiguous Service Areas Served By One Cable Operator

The 1992 Act states that cable operators shall have a uniform rate structure "throughout the geographic area in which cable service is provided over its cable system." 47 U.S.C. Section 623(d). In the NPRM, the Commission focuses on the term "geographic area" and suggests that a rate structure must be uniform within all contiguous communities served by a single headend. The Commission's conclusion is not required by the 1992 Act and is contrary to public policy.

(1) Cable Systems Are Defined On A Community Unit Basis [¶114]

Section 602(7) of the Act defines a cable system as a "facility . . . within a community" which delivers video programming to multiple subscribers. 47 U.S.C. Section 602(7). Since the Act's uniform rate provision requires uniformity only in those areas where service is provided by the cable system, uniformity is required on a community-by-community basis. In other words, the Act requires that within each community that a cable facility serves, the rate structure must be uniform. This is consistent with the Act's vesting of basic rate authority in local franchising authorities, who vary from community unit to community unit.

The legislative history confirms a Congressional intent to address only the occasional problem of neighborhood discounting "in different parts of one cable franchise ... to undercut a competitor temporarily." S. Rep. at 76. The Commission should not impair a cable operator's ability to compete by implementing a broader rate uniformity restriction than was intended.

(2) Franchise Costs Can Vary Significantly [¶115]

As a practical matter, forcing a cable operator with contiguous franchise areas to standardize rates across the board, will produce an adverse economic impact on both the cable system or its customers. The costs associated with serving different franchise areas can vary dramatically for a cable operator. For example, one community might require studios for local access programming, additional local service offices, an Institutional Network for municipal use, and high franchise fees and taxes. Rate uniformity will spread those costs across more frugal cities and dilute political accountability.

Continental's system serving Woburn, Massachusetts is an example. The system serves seven communities with five different price lists. Two of the towns negotiated senior discounts. Historically different channels were added at different times to the various channel lineups, and the expenses varied. One town has an actively used I-Net. Three towns have separately funded access corporations with a separate line item for those charges. Some of the systems were acquired by Continental in the middle of a rebuild, so that some of the communities were served with 36 channels and others with 60. If a uniform rate requirement was broadly imposed, a cable operator would be faced with forcing lower-cost communities to cross-subsidize the rates of the higher-cost communities so that the cable operator can at least recover its investment. Congress did not intend this result when it enacted Section 623(d).

In addition, other non-franchise factors may affect the cost of service within a system. For example, Wellesley, Massachusetts, has zoning laws that require cable lines to be laid underground. However, other franchises served from the same headend allow Continental to attach to existing utility poles. Finally, the actual density of homes passed in each community may vary to such an extent that costs are affected.

The interconnection of widely diverse communities by fiber, and the dismantling of headends, has become commonplace in the cable industry. For instance, Continental has been able to eliminate separate headends in Reading, Saugus and Winchester, Massachusetts, and serve those franchises via fiber optic trunks from a superior tower site and state-of-the-art headend facility in Woburn, Massachusetts. Such interconnections afford economies; but they will be stunted if every community served off a single headend must have the same rate regardless of local variations in cost, market, and programming offered.

The requirement for a uniform rate structure may apply across community limits where various franchising authorities have previously joined together, with the cable operator's assent, and granted a uniform franchise. *See* Part III.F. Such a joint franchising authority has consolidated the operator's franchise obligations, so the uniform rate requirement may sensibly be imposed for the entire joint area.

(3) Different Communities Face Different Competitive Conditions

Franchises are not issued on a headend basis. They are issued for discrete community units. Both franchised and unfranchised competitors may enjoy widely different penetration in different communities served off of the same headend. Section 623(1)(1) expressly tests for the presence or absence of "effective competition" in terms of a "franchise area." Thus, a single headend may serve several communities, only some of which face "effective competition." For this reason, it would hobble an operator to require that any competitive discount be extended to all communities which are served by the same headend. It would also promote uneconomic entry into discrete communities by inviting overbuilds in areas protected by the umbrella of cost averaging across high cost and low cost communities.

Cable operators should have the same flexibility in meeting competitive differences as the Commission recently granted to local exchange carriers under CC Docket 91-144. To "expand the LECs' flexibility in responding to competition," the FCC permits LEC rates for "special access" services, which are subject to competition, to differ between zones. Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, ("Expanded Interconnection Order") 7 F.C.C.Rcd. 7369, 7454-55 (1992).

(4) A Strict Uniform Rate Approach Will Promote Greenmail

As a practical matter, unless cable operators are afforded the flexibility to establish different rates in different communities, every cable system facing an overbuilder in only one community will likely be subjected to the classic greenmail scenario: either the operator retains its rate levels (throughout the headend service area) and loses virtually all of the overbuilt community; or, the operator may cut rates in every community to the rate levels offered in the "cream area" selected by the overbuilder, so that the revenue loss dwarfs the price of the greenmail.

(5) A Strict Uniform Rate Approach Will Frustrate Informal Resolution of Local Rate Disputes

Many of the Commission's procedural proposals -- such as permitting local franchising authorities to refrain from certifying -- are intended to promote flexibility and informal resolution of rate disputes. Continental's procedural suggestions -- such as pre-filing notices to cable operators -- have the same goal. The prospects of informal resolution at the community level would be entirely frustrated if every rate resolution were to require consent of all franchising authorities which happen to be served by the same system.

B. The 1992 Act Permits the Creation of Bona Fide Service Categories [¶112-13, ¶117]

Section 623(e) authorizes but does not compel regulatory authorities to prohibit discrimination. Where local authorities do so, cable operators should be allowed to develop *bona fide* service categories. Different categories of customers warrant different rate levels. This is particularly true for multiple subscriber agreements, including (1) rates charged to seasonal or transient customers (such as the hotel/motel industry); (2) large commercial properties; and (3) a long term contract to serve a multiple dwelling unit ("MDU" -- such as an apartment building) or a planned unit development ("PUD" -- such as a planned suburban community). Cable operators negotiate these service contracts with commercial businesses, MDU management companies and developers. A typical bulk billing agreement will reduce the rate to reflect the efficiencies of rendering one invoice and achieving 100% penetration of the MDU, but the terms are negotiated and varied. By their very nature, these sophisticated, often customized commercial situations differ from the cable operator's relationship with individual subscribers. These commercial agreements most frequently resemble franchise agreements, rather than any individual service contract. A management company or developer routinely seeks price discounts or service enhancements (e.g., community channel) for its residents. These agents will not accept higher prices from a cable company based on the explanation that the rates are required under federal regulations: They will contract with a SMATV or install a system themselves. Cable operators must be allowed to draw reasonable distinctions in order to operate in the market.

Merely allowing cable operators to establish separate classes of prices for bulk accounts does not alone solve the problem. Many such agreements must be tailored to meet specific local circumstances. In this regard, the Commission has received a letter in this Docket from Environ Towers II Condominium Association of Lauderhill, Florida dated December 15, 1992. The Condominium Association's letter and a January 25, 1993 response from Ellen Filipiak, Continental's Broward County Vice President and District Manager, provide a good illustration of the complexities of the MDU/PUD problem. Were Continental simply to charge Environ Towers II unit owners its existing retail or bulk rates, unit owners would have to pay more for basic and satellite services than our proposed negotiated arrangement would require. <u>See</u> Appendix H.

Finally, with regard to these long term contracts, regardless of which uniform rate/discrimination rules are implemented, an exception must be carved out to grandfather cable operators' existing long term contracts for MDUs and PUDs. Without such an exception, cable operators not only would